

SCANNED

DATE: 4-28-09
KOW

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

CIVIL ACTION NO.

NICHOLAS HURLIN and
BENNETT B. HURLIN,
Plaintiffs

v.

TOWN OF ROWLEY,
Defendant

04 10833 WGY

**DEFENDANT, TOWN OF ROWLEY'S ANSWER TO AMENDED COMPLAINT
AND JURY DEMAND**

PARTIES

The defendant, Town of Rowley hereby answers the Plaintiffs' Amended Complaint, paragraph by paragraph as follows:

1. The defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph.
2. The defendant admits the allegations contained in this paragraph.

VENUE

3. The allegations in this paragraph call for a legal conclusion and, therefore require no response from the defendant. If a response is required, the defendant denies the allegations of this paragraph.

FACTS

4. The defendant admits that the plaintiff made threatening statements to the Rowley Board of Health Chairman and the Rowley Board of Selectmen on January 8, 2001. The defendant denies the remaining allegations contained in this paragraph.
5. The defendant denies the allegations contained in this paragraph.
6. The defendant denies the allegations contained in this paragraph.
7. The defendant denies the allegations contained in this paragraph.
8. The defendant denies the allegations contained in this paragraph.
9. The defendant denies the allegations contained in this paragraph.
10. The defendant denies the allegations contained in this paragraph.

COUNT ONE

11. The defendant repeats its answers to paragraph 1-10 as if fully set forth herein.
12. The allegations in this paragraph call for a legal conclusion and, therefore require no response from the defendant. If a response is required, the defendant denies the allegations contained in this paragraph.

COUNT TWO

13. The defendant repeats its answers to paragraph 1-12 as if fully set forth herein.
14. The allegations in this paragraph call for a legal conclusion and, therefore require no response from the defendant. If a response is required, the defendant denies the allegations contained in this paragraph.

COUNT THREE

15. The defendant repeats its answers to paragraph 1-14 as if fully set forth herein.
16. The defendant denies the allegations contained in this paragraph.
17. The defendant denies the allegations contained in this paragraph.
18. The defendant denies the allegations contained in this paragraph.
19. The defendant denies the allegations contained in this paragraph.
20. The defendant denies the allegations contained in this paragraph.
21. The defendant denies the allegations contained in this paragraph.

Wherefore, the defendant denies the plaintiff is entitled to the relief requested in Paragraph 1-8 of the plaintiff's Prayer for Relief.

AFFIRMATIVE DEFENSES

FIRST AFFIRMATIVE DEFENSE

By way of affirmative defense, the defendant states that the action is barred by the applicable statute of limitations.

SECOND AFFIRMATIVE DEFENSE

By way of affirmative defense, the defendant states that the plaintiff, by his conduct and actions and/or the conduct and actions of his agents and servants, is estopped to recover any judgment against the defendant.

THIRD AFFIRMATIVE DEFENSE

By way of affirmative defense, the defendant states that the plaintiff has, by his actions and/or by the conduct and actions of his agents and servants, waived any and all rights he may have had against the defendant, and, therefore, the plaintiff cannot recover in this action.

FOURTH AFFIRMATIVE DEFENSE

By way of affirmative defense, the defendant states that if the plaintiff suffered injuries or damages, as alleged, such injuries or damages were caused by someone for whose conduct the defendant was not and is not legally responsible.

FIFTH AFFIRMATIVE DEFENSE

By way of affirmative defense, the defendant states that process was deficient.

SIXTH AFFIRMATIVE DEFENSE

By way of affirmative defense, the defendant states that the plaintiff cannot recover because the plaintiff failed to give notice of the damages and/or injuries allegedly suffered by the plaintiff to the defendants as required by the statutes of the Commonwealth of Massachusetts.

SEVENTH AFFIRMATIVE DEFENSE

By way of affirmative defense, the defendant states that no act or omission by the defendant was a proximate cause of damages, if any, allegedly sustained by the plaintiff.

EIGHTH AFFIRMATIVE DEFENSE

By way of affirmative defense, the defendant states that the plaintiff is not entitled to recover because the plaintiff failed to mitigate damages.

NINETH AFFIRMATIVE DEFENSE

By way of affirmative defense, the defendants state that the plaintiff failed to serve the Complaint within 90 days as required by Rules of Civil Procedure, Rule 4.

TENTH AFFIRMATIVE DEFENSE

By way of affirmative defense, the defendant states that the plaintiff's complaint fails to state a claim upon which relief can be granted.

ELEVENTH AFFIRMATIVE DEFENSE

By way of affirmative defense, the defendant states that the defendant was justified in its conduct and acts and therefore is not liable to the plaintiff as alleged in the Complaint.

TWELTH AFFIRMATIVE DEFENSE

By way of affirmative defense, the defendant states that the plaintiff suffered no compensable harm as a result of the alleged conduct of the Defendants.

THIRTEENTH AFFIRMATIVE DEFENSE

By way of affirmative defense, the defendant states that the defendant's actions are entitled to qualified good faith immunity.

FOURTEENTH AFFIRMATIVE DEFENSE

By way of affirmative defense, the defendant states that its actions are immune from suit as they were discretionary functions.

FIFTEENTH AFFIRMATIVE DEFENSE

By way of affirmative defense, the defendant states that its acts and conduct were performed according to, and protected by, law and/or legal process, and that therefore, the plaintiff cannot recover.

SIXTEENTH AFFIRMATIVE DEFENSE

By way of affirmative defense, the defendant states that at all times material, it acted reasonably, within the scope of the defendant official discretion and with a good faith belief that the defendant's actions were lawful and not in violation of any clearly established right of which a reasonable person would have known with regard to all matters in the complaint which bear on a question of state or federal law.

SEVENTEENTH AFFIRMATIVE DEFENSE

By way of affirmative defense, the defendant states that the action filed by the plaintiff is frivolous, wholly unsubstantial and not advanced in good faith and, therefore, is in contravention of M.G.L. c. 231, §6F and defendant is entitled to recovery of all costs, expenses and attorney's fees associated with the defense of this action.

EIGHTEENTH AFFIRMATIVE DEFENSE

By way of affirmative defense, the defendant states that any statements or comments made were true.

NINETEENTH AFFIRMATIVE DEFENSE


By way of affirmative defense, the defendant states that as to any claims for intentional torts, the defendant is entitled to immunity.

WHEREFORE, the defendant denies that the plaintiff is entitled to any recovery.

JURY DEMAND

The defendant demands a trial by jury as to all Counts and Causes of
Action.

Respectfully submitted,
The Town of Rowley
By its attorneys,


A handwritten signature in cursive script, appearing to read "Pamela Fitzgerald", is written over a horizontal line.

Pamela J. Fitzgerald, BBO No. 563130
BRODY, HARDOON, PERKINS & KESTEN, LLP
One Exeter Plaza
Boston, MA 02116
(617) 880-7100

Date: 4/26/04

CERTIFICATE OF SERVICE

I, Pamela J. Fitzgerald, hereby certify that a true copy of the above document was served upon each counsel of record by first class mail on April 26, 2004.



Pamela J. Fitzgerald, Esq.